

May 13, 2005

BY FACSIMILE AND REGULAR MAIL

Wendy J. Mellk, Esq.  
Jackson Lewis  
58 South Service Road  
Suite 410  
Melville, NY 11747

Re: Jeff Schmidt v. American Institute of Physics, et.al.  
Civil Action No. 04-cv-3774 United States District  
for the District of Maryland

Dear Wendy:

I write in response to your letter dated May 13, 2005 regarding your allegation that Plaintiff's production and responses to Defendant's document requests are "wholly [] inadequate." Specifically, you state that "Rule 34 requires a party responding to a request for production of documents to organize and label the documents to correspond with the categories in the request." Your recitation of the rule, however, is incomplete and inaccurate. Rule 34(b) states that "[a] party who produces documents for inspection *shall produce them as they are kept in the regular course of business* or shall organize and label them to correspond with the categories in the request." Consistent with this Rule, we have produced Plaintiff's documents as Dr. Schmidt maintained them. Thus, our production is in full compliance with Rule 34.<sup>1</sup>

You also take issue with our written responses to your document requests, though it is not entirely clear to me what your objection is. While you seem to complain that we state a variety of objections, you recognize that the responses go on and state that we *will* ultimately produce documents responsive to the requests; and we have done so. As such, with the exception of our response to Request No. 30 (which is objectionable for the reasons noted in our response

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<sup>1</sup> Moreover, as Defendant's Document Request No. 1 is so overbroad - asking for documents referring or relating to *any* allegations in Plaintiff's Complaint regarding wrongful conduct - virtually all of Plaintiff's documents are responsive to Request No. 1 and they have been produced to correspond with that request.

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thereto), Plaintiff has produced all documents in his possession responsive to each request. I note that, despite your complaint regarding our objections, Defendant too states a host of objections with respect to each and every one of Plaintiff's document requests; in fact, every one of Plaintiff's objections can be found in Defendant's Responses to Plaintiff's Document Requests. However, whereas Plaintiff goes on and states that he will produce all non-privileged responsive documents, and has in fact done so, AIP stands on its objections and has *not* made a full production. (See Koons' May 6, 2005 letter to Mellk regarding AIP's production deficiencies).

Finally, we will serve our responses to Interrogatories shortly. In your letter of May 2, 2005, you demanded that we produce our documents as soon as possible. We immediately concentrated our efforts to provide those documents and our document responses as soon as possible in light of your demand and recent discussions regarding mediation and depositions.

Please let me know if you have any questions or comments regarding the foregoing. I look forward to speaking with you on Monday, May 16, 2005 at 11 a.m. to discuss the issues raised in my letter of May 6, 2005.

Respectfully,

A handwritten signature in black ink, appearing to be 'Erik T. Koons', written over a horizontal line.

Erik T. Koons

cc: Warren Kaplan  
Trish Butler  
Dr. Jeff Schmidt